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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,875	04/12/2004	Byoung-Woo Cho	1749.1010	1817

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EXAMINER	
DURHAM, NATHAN E	
ART UNIT	PAPER NUMBER
3765	
MAIL DATE	DELIVERY MODE
03/11/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/821,875	CHO, BYOUNG-WOO	
	Examiner	Art Unit	
	NATHAN E. DURHAM	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 December 2010*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,4,6 and 7* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,4,6 and 7* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *28 December 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment/Arguments

The declaration under 37 CFR 1.132 filed 30 December 2010 is insufficient to overcome the rejection of claims 1, 2, 4, 6 and 7 based upon Lo (U.S. Patent 6,493,880) applied under 35 U.S.C. 103(a) as set forth in the last Office action because: Within the declaration, Baeyun Park and Junmyeong Park state that it is their opinion that Lo does not teach the “the at least one non-covered stretch yarn is a non-covered spandex yarn which is not covered by any covering yarn” (feature of claim 1) because the spandex yarn of Lo "inherently" includes a covering yarn even though a covering yarn is never mentioned within Lo. Firstly, the examiner notes that for someone to state something is inherent, it means that he or she is stating that it MUST be that way every time, without exception. Therefore, Baeyun Park and Junmyeong Park are stating that all spandex yarns used within a textile piece (fabric, etc) are always covered with a covering yarn at the time of Lo (2002) and/or prior to the applicant's invention. The last paragraph of the Textile Science reference by Hatch (refer to PTO-892) recites “Rubber fibers are made into single- or double-covered yarns before being incorporated into elasticized fabrics. Spandex filaments are used in three forms: bare filament, covered yarns, and core-spun yarns. Most of the spandex used is bare filaments". Accordingly, the statements by Baeyun Park and Junmyeong Park are FALSE because the recitation above proves that spandex filaments are not "always” covered with a covering yarn (i.e. bare filament). Note that the recitation further states that most spandex used is "bare filament" showing

a complete opposite opinion then found within the applicant's filed declaration. Therefore, the 35 U.S.C. 103(a) rejection of claims 1, 2, 4, 6 and 7 by Lo still stands as shown below.

Claim Objections

Claim 2 is objected to because of the following informalities: Claim 2 recites the limitation "the crown portion" within the second line of the claim. There is insufficient antecedent basis for this limitation in the claim. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 2, 4, 6 and 7 rejected under 35 U.S.C. 103(a) as being unpatentable over Lo (U.S. Patent 6,493,880).

In regard to claims 1, 2 and 4, Lo discloses elastic headwear comprising: a head-covering portion being stretchable in at least a circumferential direction thereof having a plurality of pieces (col. 3, line 67 and col. 4, lines 1-4), at least one piece being made of a stretchable knitted mesh which comprises at least one non-covered stretch yarn (refer to interpretation of "non-covered" within Office Action dated 11/9/2009) and a plurality of non-stretch yarns (col. 5, lines 5-11); and a sweatband (25) being stretchable in at least

a circumferential direction thereof (Col. 5, lines 16-17), wherein the non-covered stretch yarn and the plurality of non-stretch yarns are provided in rows without being twisted with each other. Lo discloses that the non-covered stretch yarn is a spandex yarn (col. 4, lines 61-62) wherein the spandex yarn of Lo is considered to be "not covered by any covering yarn" (refer to response section within Office Action dated 8/2/2010). In summary of the explanation given by the examiner within the Office Action dated 2 August 2010, Lo meets the applicant's negative limitation because Lo does not disclose/mention any covering yarn be present on the spandex yarn thereof. Lo discloses that the non-stretch yarns can be polyester (col. 5, lines 5-11).

Note that the most important characteristic of the head covering is the ability to be stretchable in the circumferential direction. Lo discloses a knitted mesh (col. 5, lines 6- 7) and that the head covering portion be stretchable in the circumferential direction (col. 4, lines 1-4). Lo provides a clue to one of ordinary skill in the knitting art at col. 5, lines 6 & 7 where it is mentioned that a small amount of spandex is in the weft direction. If this were weft knitted, a statement of plying of feeding along with other yarn would be provided. Since stretch warp knit fabrics primarily receive their stretch characteristics from the stretch yarns, it is interpreted that the small amount of spandex in the weft direction implies a warp knit fabric. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a warp knitted mesh to produce the head covering portions that are stretchable in the circumferential direction as disclosed by Lo since Lo provides a clue to one of ordinary skill in the art of knitting that the fabric used is warp knitted fabric.

In regard to claim 6, Lo discloses that the front pieces of the crown are stiffened (col. 4, lines 41-44).

In regard to claim 7, Lo discloses that a common way for adjusting the size of the cap employs an adjustable strap disposed at the back of the cap for adjustment by the wearer (col. 1, lines 15-17). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Lo's apparatus by including a size adjustment member disposed on the rear pieces to further adjust the size of the crown portion since it is a common practice in the art.

Conclusion

The prior art made of record, as cited on attached PTO-892, and not relied upon is considered pertinent to applicant's disclosure.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NATHAN E. DURHAM whose telephone number is (571)272-8642. The examiner can normally be reached on Monday - Friday, 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary L. Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NED

/Nathan E Durham/
Examiner, Art Unit 3765